

REMARKS

Claims 55-59, 79, 86, 89 and 92 are canceled. New claims 102-103 are added. Support for the new claims is provided by exemplary embodiments of the invention described in the originally-filed application at, for example, page 12, last paragraph.

Claims 62-75, 80-81, 87, and 93-98 are allowed.

Claims 88-90, 99-101 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 89 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding the §112 first paragraph rejection against independent claim 88, the Examiner alleges there is no support for providing fluorine within the gate oxide before forming the gate (pg. 2 of paper no. 20050613). Stated another way, the Examiner further alleges that the specification supports only chlorine as being provided before or after formation of a gate (pg. 2 of paper no. 20050613). The Examiner is mistaken.

Claim 88 recites providing fluorine within the gate oxide layer and forming a gate proximate the gate oxide layer having the fluorine therein after the providing. The Examiner is respectfully reminded that MPEP §2163.02 (8th ed., revision no. 2) states with respect to written description support is that the

"fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that...applicant was in possession of the invention as now claimed." MPEP §2163.02 *citing Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). Applicant first directs the Examiner's attention to page 12, lines 19-21 of the originally-filed application, which states: "[t]he above-described embodiments preferably place doped chlorine or fluorine proximate both edges 26 and 28 [of a gate] within the respective gate oxide layers." This statement is provided after all the exemplary embodiments of the invention are described in the originally-filed application, and therefore logically, is applicable to each and every exemplary embodiment disclosed, including the embodiment disclosed by Fig. 1. Regarding further disclosure of the Fig. 1 embodiment, Applicant directs the Examiner's attention to page 6 which teaches a gate oxide layer 16 can be doped "before or after formation of gate construction 18." Appropriately combining these written descriptions as being directed to the embodiment of Fig. 1, this disclosure clearly supports fluorine and chlorine as being provided before or after formation of a gate, contrary to the allegation by the Examiner. Moreover, these written descriptions directed to the Fig. 1 embodiment clearly support forming a gate proximate the gate oxide layer having the fluorine therein after the providing as positively recited in claim 88. Consequently, pursuant to the above Federal Circuit and MPEP authority, the claim language of claim 88 is supported as

having a written description, and therefore, the §112 first paragraph rejection against independent claim 88 is improper and should be withdrawn.

No other rejections are presented against claim 88, and therefore claim 88 is allowable.

If the Examiner maintains the §112 first paragraph rejection against independent claim 88, Applicant requests that the next action be a non-final action to provide Applicant the opportunity to appropriately respond. Applicant respectfully reminds the Examiner that the regulatory mandate of 37 CFR 1.104(b) is that "the examiner's action will be complete as to all matters." MPEP §707.07 (8th ed. revision no. 2). Furthermore, the MPEP states that the Examiner must set forth express findings of fact regarding the analysis to support the lack of written description:

These findings should:

- (A) Identify the claim limitation at issue; and
- (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed.

MPEP §2163 III. A. (8th ed., revision no. 2). The Office Action has failed to establish a *prima facie* case of facts directed to why a person skilled in the art, given the disclosure presented above, would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. Therefore, since a *prima facie* case has not been

presented, and if the §112 rejection is maintained in a subsequent action, a new non-final Office Action is warranted to provide the opportunity for the Applicant to have a full and fair hearing against any newly alleged *prima facie* case of lack of written support for claim 88. Moreover, the record for appeal is presently incomplete due to the deficiencies of the §112 rejection as demonstrated above, and therefore, the Examiner's action is incomplete as to all matters, pursuant to the above authority. For these reasons, the issuance of a new non-final Office Action is appropriate and warranted if the §112, first paragraph, rejection is maintained in a subsequent action. Claim 88 is allowable.

Claims 90 and 99-103 depend from independent claim 88, and therefore, are allowable for the reasons presented above regarding the independent claim, as well as for their own recited features which are not shown or taught by the art of record.

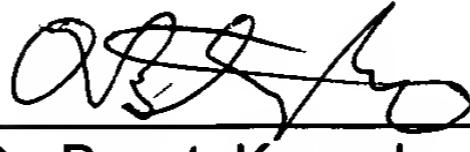
This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Application Serial No. 09/292,132
Response to June 16, 2005 Office Action

MI22-1171

Respectfully submitted,

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